In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 893

JOSEPH NAVARRO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The judgment of the court of appeals dismissing petitioner's appeal as frivolous was entered on March 14, 1962. The petition for a writ of certiorari was lodged on April 16, 1962, and docketed on April 20, 1962 when the docket fee was paid. The petition, which seeks review of a judgment in a criminal case, is out of time under Rule 22(2) of the Rules of this Court. In any event, the question raised by petitioner presents no issue which would warrant review by this Court.

Petitioner was sentenced to five years' imprisonment in the United States District Court for the Southern District of Iowa on a plea of guilty to a two-count information charging that he, with intent to defraud, had uttered a forged postal money order knowing the indorsements thereon to be false and forged in violation of 18 U.S.C. 500. He was represented by two attorneys of his own selection. On September 2, 1960, immediately after sentence was imposed, petitioner orally moved to withdraw his guilty plea on the ground that the length of the sentence was greater than the punishment one of his attorneys had told him he would probably receive (Tr. 28-29); according to petitioner, the attorney had said that upon a plea of guilty he "would not in all probability" (Tr. 28) receive more than an eighteen-month sentence. Petitioner conceded below, as he concedes in this Court by implication (Pet. 3), that his other attorney advised him that he might receive a maximum sentence (Tr. 30-31). The record also discloses that at his arraignment on August 23, 1960, prior to the waiver of indictment and shortly before his guilty plea, petitioner denied that his counsel or anyone else had made any promises concerning the court's possible actions in the case (Tr. 4-8).

Petitioner's contention that the sentencing court abused its discretion in refusing to permit petitioner to withdraw his guilty plea was properly found to be frivolous. The "advice" of one of his two attorneys, by petitioner's own statement of it, was merely a conjecture as to the judge's action, a conjecture not concurred in by his other counsel. Disappointment

in the sentence actually imposed affords no adequate basis for relief from a plea of guilty. *Friedman* v. *United States*, 200 F. 2d 690 (C.A. 8), certiorari denied, 345 U.S. 926; *Ridgeway* v. *United States*, 205 F. 2d 680 (C.A. 6). Cf. *Sullivan* v. *United States*, 348 U.S. 170, 174-175.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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